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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 212

**HURON HOLDING CORPORATION AND NATIONAL
SURETY CORPORATION, PETITIONERS,**

vs.

LINCOLN MINE OPERATING COMPANY

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE NINTH CIRCUIT.**

PETITION FOR CERTIORARI FILED JULY 5, 1940.

CERTIORARI GRANTED OCTOBER 14, 1940.

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vs.

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**NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD**

**WILLIAM H. LANGROISE,
SAM S. GRIFFIN,
ERLE H. CASTERLIN,**
Boise, Idaho,
Attorneys for Appellant.

**JESS HAWLEY,
OSCAR W. WORTHWINE,**
Boise, Idaho,
Attorneys for Appellees. [2*]

In the District Court of the United States for the
District of Idaho, Southern Division

No. 1953

LINCOLN MINE OPERATING COMPANY,
a corporation,

Plaintiff,

vs.

**MANUFACTURERS TRUST COMPANY, a cor-
poration, HURON HOLDING CORPORA-
TION, FRED TURNER and ALEXANDER
LEWIS,**

Defendants.

JUDGMENT

This action came on regularly for trial, said parties appearing by their attorneys. A jury of twelve

*Page numbering appearing at the foot of page of original certified Transcript of Record.

persons was regularly empaneled and sworn to try said action and witnesses on the part of the plaintiff and defendant were sworn and examined. After hearing evidence, the argument of counsel and instructions of the Court, the jury retired to consider of their verdict, and subsequently returned into court, and being called, answered to their names and presented their written verdict, as follows:

[Title of District Court and Cause.]

“We, the jury in the above entitled case, find for the plaintiff and assess its damages against the defendant Huron Holding Corporation, in the sum of \$6730.70.

CARL BEESON,

Foreman.”

Wherefore, by virtue of the law, and by reason of the premises aforesaid, it is ordered and adjudged that the plaintiff have and recover from said defendant, the Huron Holding Corporation, the sum of Sixty-seven Hundred Thirty and 70/100 Dollars (\$6730.70), with interest thereon from the date hereof until paid, together with said plaintiff's costs and disbursements incurred in this action, amounting to the sum of \$79.42.

Witness The Honorable Charles C. Cavanah, Judge of said Court, and the seal thereof this 3rd day of March, 1938.

[Seal]

W. D. McREYNOLDS,

Clerk.

[Endorsed]: Filed March 3, 1938. [4]

[Title of District Court and Cause.]

ORDER

The application of the defendant Huron Holding Corporation for a new trial having been presented and after consideration of the same it is Ordered that said application be and the same is denied.

Dated April 16, 1938.

CHARLES C. CAVANAH,

District Judge.

[Endorsed] : Filed April 16, 1938. [5]

[Title of District Court and Cause.]

ORDER ALLOWING APPEAL

The defendant, Huron Holding Corporation, having this day filed its petition for appeal from the judgment in the above entitled cause to the United States Circuit Court of Appeals for the Ninth Circuit, together with an assignment of errors, and having petitioned for an order to be made fixing the amount of security which defendant should give and furnish upon said appeal, and that upon the giving of said security all further proceedings in this court be suspended and stayed until the determination of said appeal;

Now, Therefore, It Is Ordered that the said defendant, Huron Holding Corporation, on filing with the Clerk of this Court a good and sufficient under-

taking in the sum of \$10,000.00 to the effect that if the defendant, Huron Holding Corporation, shall prosecute the said appeal to effect and answer all damages, interest and costs if it fails to make its plea good, then the said obligation to be void, else to remain in full force and virtue, the said undertaking to be approved by this court, that all proceedings in this court be and they are hereby suspended and stayed until the determination of said appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 31st day of May, 1938.

CHARLES C. CAVANAH,

District Judge.

[Endorsed]: Filed May 31, 1938. [6]

[Title of District Court and Cause.]

UNDERTAKING ON APPEAL

Know All Men By These Presents: That National Surety Corporation, a corporation created, organized and existing under and by virtue of the laws of the State of New York, and authorized to transact a surety business in the State of Idaho, is held and firmly bound unto Lincoln Mine Operating Company, a corporation, in the full and just sum of Ten Thousand Dollars (\$10,000.00), lawful money of the United States, to be paid to the said Lincoln Mine Operating Company, a corporation,

its successors or assigns, to which payment, well and truly to be made, the said National Surety Corporation, a corporation, binds itself; its successors and assigns, by these presents.

Sealed with our seal, and dated this 31st day of May, 1938.

Whereas, lately, at the February, 1938, term of the District Court of the United States, for the District of Idaho, Southern Division, in a suit pending in said court between Lincoln Mine Operating Company, plaintiff, and Manufacturers Trust Company, a corporation, Huron Holding Corporation, a corporation, Alexander Lewis, and Fred Turner, defendants, a judgment was rendered against the said Huron Holding Corporation, a corporation, on March 3, 1938, at the said term of court, and the said Huron Holding Corporation, a corporation, has petitioned for and been allowed, by the Hon. Charles C. Cavanah, Judge of the said District Court, an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and a citation has been issued, directed to the said Lincoln Mine Operating Company, a corporation, citing it to appear in the said United States Circuit Court of Appeals for the Ninth Circuit, in the City of San Francisco, State of California, within thirty days from the date of such citation.

Now, the condition of the above obligation is such that if the said Huron Holding Corporation, a corporation, shall prosecute its said appeal to effect,

and shall answer all damages, [7] interest, and costs if it fail to make good its plea, then the above obligation to be void; else to remain in full force and virtue.

[Seal] NATIONAL SURETY CORPORATION,

By GEO. C. WALKER,

Its Attorney-in-fact.

Countersigned by:

GEO. C. WALKER,

Its resident agent, residing at
Boise, Idaho.

Approved May 31st, 1938:

CHARLES C. CAVANAH,

United States District Judge.

[Endorsed]: Filed May 31, 1938. [8]

[Title of District Court and Cause.]

MANDATE

United States of America—ss.

The President of the United States of America

[Seal]

To the Honorable the Judges of the District Court
of the United States for the District of Idaho,
Southern Division—Greeting:

Whereas, lately in the District Court of the
United States for the District of Idaho, Southern

Division, before you, or some of you, in cause between Lincoln Mine Operating Company, a corporation, Plaintiff, and Manufacturers Trust Company, a corporation, Huron Holding Corporation, a corporation, Alexander Lewis and Fred Turner, Defendants, No. 1953, a Judgment was duly filed on the 3rd day of March, 1938, which said Judgment is of record and fully set out in said cause in the office of the Clerk of the said District Court, to which record reference is hereby made and the same hereby expressly made a part hereof, and as by the inspection of the Transcript of the Record of the said District Court, which was brought into the United States Circuit Court of Appeals for the Ninth Circuit by virtue of an appeal prosecuted by Huron Holding Corporation, a corporation, as appellant, against Lincoln Mine Operating Company, a corporation, as appellee, agreeably to the Act of Congress in such cases made and provided, fully and at large appears:

And Whereas, on the third day of February, in the year of our Lord One Thousand Nine Hundred and thirty-nine the said cause came on to be heard before the said Circuit Court of Appeals, on the said Transcript of the Record, and was duly submitted: [9]

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and hereby is affirmed, with costs in favor of the appellee and against the appellant.

It is further ordered and adjudged by this Court that the appellee recover against the appellant for its costs herein expended, and have execution therefor.

(February 7, 1939).

You, Therefore, Are Hereby Commanded, That such execution and further proceedings be had in the said cause as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness, the Honorable Charles E. Hughes, Chief Justice of the United States, the 9th day of March, in the year of our Lord One Thousand Nine Hundred and thirty-nine.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

[Endorsed]: Filed March 13, 1939. [10]

[Title of District Court and Cause.]

NOTICE OF ATTORNEYS' LIEN.

Notice Is Hereby Given, That the undersigned attorneys claim a lien for their services upon the cause of action in the above entitled cause, and any judgment rendered therein for the plaintiff, upon all papers in their possession in connection with said cause, and all monies in their hands or in the hands of the adverse party, or in the hands of any surety for the said adverse party, upon appeal for costs or supersedeas, and upon all personal property

mentioned and described in plaintiff's complaint and involved in this cause of action, together with interest due and to become due thereon from March 3, 1938. Said claim is for the agreed sum of 331 $\frac{1}{3}$ % of the recovery in said action, either in money or in property, together with costs and expenses due to such attorneys in said cause, or connected therewith, no part of which has been paid.

Dated: January 26, 1939.

W. H. LANGROISE,

E. H. CASTERLIN,

SAM S. GRIFFIN,

Attorneys for Plaintiff,

Residence: Boise, Idaho.

[Endorsed]: Filed Jan. 27, 1939. [11]

[Title of District Court and Cause.] :

MOTION FOR SATISFACTION OF
JUDGMENT.

Comes Now, the Huron Holding Corporation, a corporation, the defendant in the above entitled action, for itself and on behalf of the National Surety Corporation, a corporation, which is the surety on that certain supersedeas bond in the amount of \$10,000.00 filed in the above entitled action, and moves the above entitled court to make and enter an order satisfying the judgment made and entered herein against the Huron Holding Corporation, a corporation, which said judgment was entered upon the 3rd day of March, 1938, and was

in the amount of \$6,730.70, together with costs incurred by said plaintiff in this court in the amount of \$79.42, and costs awarded it by the Circuit Court of Appeals for the Ninth Circuit, upon the grounds and for the reason that said judgment including costs has been fully paid and discharged, and that the same was paid as follows, to-wit: [12]

I.

That the said defendant, Huron Holding Corporation, a corporation organized and existing under the laws of the State of New York, has paid the sum of \$4,805.55 upon said judgment; that said sum was paid by said defendant upon said judgment upon about the first day of March, 1939, under a levy and warrant of attachment issued out of the Supreme Court of the State of New York, County of New York, in the case of Manufacturers Trust Company, a corporation, plaintiff, vs. Lincoln Mine Operating Company, a corporation, defendant, which case is pending in the Supreme Court of the State of New York, for the County of New York, and in which said cause the following proceedings were had:

(a) That on or about the 29th day of June, 1938, the said Manufacturers Trust Company filed an action against the Lincoln Mine Operating Company, the judgment creditor herein, in the Supreme Court of the State of New York, for the County of New York, and caused a warrant of attachment to be issued against any property found in New York

County belonging to the said Lincoln Mine Operating Company; that the situs of the judgment obtained in the above entitled cause was in the State of New York by reason of the fact that the judgment creditor, the Huron Holding Corporation, was a citizen and resident of the State of New York.

(b) That said warrant of attachment was served upon the Huron Holding Corporation, a corporation, by the Sheriff of New York County on or about the 12th day of July, 1938, and that the said Sheriff by said warrant of attachment attached the said judgment which was entered in this court [13], against the defendant herein, Huron Holding Corporation, a corporation, upon the 3rd day of March, 1938, in the amount of \$6,730.70.

(c) That the said Huron Holding Corporation, pursuant to said writ of attachment, on or about the 15th day of July, 1938, executed and delivered to said Sheriff its certificate specifying the indebtedness owing by it to said Lincoln Mine Operating Company upon said judgment.

(d) That the said Sheriff of New York County on July 19, 1938, duly filed his report and appraisal of said property so attached.

(e) That the said plaintiff herein, Lincoln Mine Operating Company, was duly served with process in the said case pending in the State of New York on July 18, 1938.

(f) That the said Lincoln Mine Operating Company, a corporation, the defendant in the New York

action, defaulted and failed to appear in the New York court in said cause.

(g) That on February 25, 1939, a judgment was recovered in said New York action against the said Lincoln Mine Operating Company in the total amount of \$15,842.02.

(h) That, thereafter an execution upon said judgment was had against the property attached, to-wit:

The judgment held against the Huron Holding Corporation by the Lincoln Mine Operating Company entered in this court on the 3rd day of March, 1938.

(i) That the said Sheriff of New York County, by virtue of said warrant of attachment, judgment and execution, on or about the first day of March, 1939, collected and [14] received from the Huron Holding Corporation the sum of \$4,805.55, which is the amount of the judgment obtained in this court, together with interest and costs, less one-third thereof, which said one-third is claimed by the attorneys for the plaintiff, Lincoln Mine Operating Company, as attorneys' fees by virtue of a lien filed by them on the judgment in the above entitled court.

(j) That the said Sheriff of New York County has paid to the Manufacturers Trust Company the amount so collected by him less his legal fees and expenses, to-wit, the sum of \$4,642.42, which amount the Manufacturers Trust Company has applied upon the judgment entered and recovered by it in the Supreme Court of New York for New York County against the Lincoln Mine Operating Company.

That all the facts above set forth are shown by the affidavit of Leonard G. Bisco, which is hereto attached and marked Exhibit 1, to which said affidavit of Leonard G. Bisco is attached a certified copy of the judgment roll in the case of Manufacturers Trust Company, a corporation, plaintiff, vs. Lincoln Mine Operating Company, defendant, which certified copy of judgment roll is attached to the affidavit of Leonard G. Bisco and marked Exhibit A, and to which is attached a certified copy of the warrant of attachment, which is attached to the affidavit of Leonard G. Bisco and marked Exhibit B, and to which is attached a certified copy of the inventory of the attached property, which is attached to the affidavit of Leonard G. Bisco and marked Exhibit C. [15]

That all of said certified copies relate to the papers and files and judgment roll in said case of Manufacturers Trust Company vs. Lincoln Mine Operating Company pending in the Supreme Court of the State of New York, for the County of New York, and are duly certified according to law.

That also attached hereto is the affidavit of William L. Schneider, marked Exhibit 2, to which is attached the following named papers in the case pending in New York entitled "Manufacturers Trust Company, plaintiff, vs. Lincoln Mine Operating Company, defendant":

Exhibit A: Copy of Summons and Complaint.

Exhibit B: Copy of Warrant of Attachment and affidavit in aid thereof.

Exhibit C: Copy of affidavit which shows service upon the Lincoln Mine Operating Company.

Exhibit D: Copy of transcript of judgment entered in said Supreme Court of New York, County of New York, in said cause.

Also attached hereto is the affidavit of Lester R. Bessell, the Vice-President and Assistant-Treasurer of Huron Holding Corporation, a corporation, marked Exhibit 3, to which affidavit is attached as Exhibit A, Notice of Property Attached, which shows the attachment of \$6,730.70 with interest from March 3, 1938, the same being the amount of and the judgment obtained in this court against the said Huron Holding Corporation, and to which is attached the receipt of John T. Higgins, Sheriff of New York County, State of New York, showing the payment by said Huron Holding Corporation to said Sheriff in said cause of the amount of \$4,805.55.

[16]

That all of said affidavits, to-wit, the affidavits of Leonard G. Bisco, William L. Schneider and Lester R. Bessell, and the exhibits attached thereto, including said certified copies, are hereby referred to and by this reference are hereby made a part thereof.

II.

That on or about the 27th day of January, 1939, W. H. Langroise, Sam S. Griffin, and E. H. Casterlin, attorneys for the Lincoln Mine Operating Company, a corporation, the plaintiff in this action, served upon the Huron Holding Corporation, a cor-

poration, and the National Surety Corporation, a corporation, as surety upon a supersedeas bond in the above entitled action, and filed in the above entitled court a notice of attorneys' lien wherein said attorneys claimed a lien for their services upon the cause of action of the plaintiff in the above entitled action and any judgment rendered therein for the agreed sum of $33\frac{1}{3}\%$ of the recovery in said action, either in money or in property, together with costs and expenses due such attorneys in said cause or connected therewith, and that said attorneys claim that they have \$367.23 due them from the said plaintiff as costs and expenses in the prosecution of said action. That one-third of said judgment with interest thereon amounts to the sum of \$2,380.05. That the said defendant herein, Huron Holding Corporation, has paid to said William H. Langroise, Sam S. Griffin and E. H. Casterlin, the said sum of \$2,380.05, and in addition to the payment of said sum has paid to said attorneys on their claim for costs and expenses the said [17] *the said* further sum of \$367.23 or a total of \$2,747.28, and the said attorneys have satisfied their lien claim by written satisfaction filed in the above entitled cause, which written satisfaction shows the payment to said attorneys of the said sum of \$2,747.28.

This motion is made upon the records and files in this action and upon the affidavits of Leonard G. Bisco, William L. Schneider and Lester R. Bessell, which are hereto attached and served herewith, and the exhibits referred to in said affidavits, and certi-

fied copy of the judgment roll, certified copy of warrant of attachment, and certified copy of inventory of attached property which are attached to the affidavit of Leonard G. Bisco. That a copy of said Satisfaction of Lien for attorneys' fees is hereto attached and marked Exhibit No. 4.

Wherefore, the Huron Holding Corporation, a corporation, moves the above entitled court to make and enter an order fully satisfying the judgment herein made and entered upon the 3rd day of March, 1938, and to satisfy the amount directed to be paid in the mandate from the Circuit Court of Appeals of the Ninth Circuit.

JESS HAWLEY,
OSCAR W. WORTHWINE,
HAWLEY & WORTHWINE,

Residence: Boise, Idaho,
Attorneys for Defendant.

(Service accepted) [18]

EXHIBIT "A"

Supreme Court of the State of New York,
County of New York

MANUFACTURERS TRUST COMPANY,
Plaintiff,

against

LINCOLN MINE OPERATING COMPANY,
Defendant.

SUMMONS

To the Above Named Defendant:

You Are Hereby Summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney within twenty days after the service of this summons, exclusive of the day of service. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated June 28th, 1938.

NEWMAN & BISCO,

Attorneys for Plaintiff.

(Office and Post Office Address)

165 Broadway, Borough of
Manhattan, City of New York.

[Title of New York Court and Cause.]

COMPLAINT

Plaintiff, by Newman & Bisco, its attorneys, for its complaint herein, alleges:

1. That plaintiff is a domestic corporation.
2. Upon information and belief, that at the times hereinafter mentioned defendant was and still is a foreign corporation organized and existing under the laws of the State of Idaho.
3. Upon information and belief, that defendant has never been authorized to do business in the State of New York.
4. That on or about June 14, 1929, in the City and State of New York, defendant, for value received, made and delivered to one Alexander Lewis its written promissory note for \$10,000, a photostatic copy of which is hereto annexed, marked "Exhibit A" and made part hereof.
5. That thereafter and before maturity, said note was duly endorsed by said Alexander Lewis and so endorsed was delivered to Plaintiff, which is now the owner and holder thereof.
6. That prior to the commencement of this action, payment of said note was duly demanded according to its tenor, but the same was not paid.
7. That there is now due and owing to plaintiff upon said promissory note the sum of \$10,000.00 with interest thereon from June 14th, 1929, no part of which has [20] been paid, although duly demanded.

Wherefore, plaintiff demands judgment against defendant in the sum of \$10,000.00 with interest thereon from June 14, 1929, besides the costs and disbursements of this action.

NEWMAN & BISCO,

Attorneys for plaintiff.

Office & P. O. Address 165
Broadway, Borough of Man-
hattan, City of New York.

[21]

[Title of New York Court and Cause.]

**AFFIDAVIT FOR WARRANT
OF ATTACHMENT**

State of New York,
County of New York—ss.

William L. Schneider, being duly sworn, deposes and says:

That the above entitled action is one to recover a sum of money only as specified in Section 902 of the Civil Practice Act. That said action is brought to recover upon a promissory note executed and delivered by defendant to one Alexander Lewis, dated June 14, 1929, in the sum of \$10,000, payable on demand at the office of the plaintiff, 139 Broadway, New York City. This note was duly endorsed and delivered by said payee thereof and is now held and owned by the plaintiff herein, as set forth in the verified complaint herein, hereto attached, marked "Exhibit A" and made part hereof. [22]

That the defendant is a foreign corporation and is not a resident of the State of New York and that at all the times in question herein said corporation was and still is a resident of and doing business in the State of Idaho, in which it was incorporated and that said defendant has never been authorized to do business within the State of New York and is not now doing business within said state. That the principal office and place of business of the defendant is in Boise, Idaho.

That plaintiff has commenced the above entitled action against defendant for the cause of action above stated and has issued a summons herein, a copy of which is hereto annexed and made part hereof, but that no service thereof has been made upon the defendant.

That no previous application for any warrant of attachment has been made in this action to any Court or Justice and that no warrant of attachment for similar relief has ever been granted here.

Dated June 29, 1938.

W. L. SCHNEIDER. [23]

[Title of New York Court and Cause.]

AFFIDAVIT

State of Idaho,
County of Ada—ss.

Marvin E. Wright, being duly sworn, deposes and says:

That he is a deputy Sheriff of Ada County, State of Idaho, and that on the 18th day of July, 1938, at Owyhee Hotel, City of Boise, Ada County, State of Idaho, he served the summons and complaint in the above entitled action on Lincoln Mine Operating Company, an Idaho corporation, the defendant therein named, by delivering to and leaving a true copy of each thereof personally with William I. Phillips, an officer of said corporation, to wit, its President.

Deponent knew said corporation so served as aforesaid to be the same corporation mentioned and described in said summons and complaint as the defendant therein, and knew said William I. Phillips to be such officer thereof at that time.

Deponent is over the age of 21 years and not a party to the action.

MARVIN E. WRIGHT.

Subscribed and sworn to before me this 23rd day of July, 1938.

[Notarial Seal] WALTER G. BELL,
Notary Public for the State of Idaho, residing at
Boise, therein. My commission expires February 17, 1939. [24]

[Title of New York Court and Cause.]

MINUTES OF THE COURT OF
FEBRUARY 25, 1939

Upon reading and filing the annexed affidavit of regularity of Benjamin Gothelf, sworn to the 23rd

day of February, 1939, and upon the deposition of Alfred D. Rubin, sworn to the 24th day of February, 1939, and upon all previous papers, pleadings and proceedings made, had and filed herein, and it appearing to the satisfaction of this Court that the summons and complaint was duly served on the defendant, Lincoln Mine Operating Company, by personal service outside of the State of New York, and that the action is brought upon one of the causes of action specified in Section 902 of the Civil Practice Act, and that an attachment against the property of the defendant was duly issued by this Court to the Sheriff of New York County who duly levied thereon, and that the time for said defendant to appear or answer herein has expired, and has not been extended by stipulation or otherwise, and said defendant has not answered or appeared herein, and it further appearing to the satisfaction of this [25] Court that the defendant, Lincoln Mine Operating Company is indebted to the plaintiff in the sum of \$10,000.00 with interest from the 14th day of June, 1929,

Now, on motion of Newman & Bisco, attorneys for the plaintiff it is

Ordered, that the Clerk of the Court be and he hereby is directed to enter a judgment in favor of the plaintiff, Manufacturers Trust Company of 55 Broad Street, in the Borough of Manhattan, City and State of New York, against the defendant, Lincoln Mine Operating Company, in the sum of \$10,000.00 with interest in the sum of \$5,806.67, a total

of \$15,806.67, together with costs and disbursements to be taxed by the Clerk of this Court, and that the plaintiff, Manufacturers Trust Company, have execution against said defendant therefor.

Enter

T A L

J. S. C.

[Endorsed]: Filed Feb. 27, 1938 (State Court.)

[26]

[Title of New York Court and Cause.]

JUDGMENT

Upon reading and filing the order of Mr. Justice Timothy A. Leary, dated the 25th day of February, 1939,

Now, on motion of Newman & Bisco, attorneys for the plaintiff herein, it is

Adjudged, that the plaintiff, Manufacturers Trust Company, of 55 Broad Street, Borough of Manhattan, City and State of New York, do recover of the defendant, Lincoln Mine Operating Company of the City of Boise, State of Idaho, the sum of \$10,000.00, with interest in the sum of \$5,806.67, together with costs and disbursements in the sum of \$35.35, making in all a total of \$15,842.02 and that the plaintiff, Manufacturers Trust Company, have execution therefor.

Dated, New York, February 27th, 1939.

ARCHIBALD R. WATSON,

Clerk. [27]

[Title of New York Court and Cause.]

WARRANT OF ATTACHMENT

The People of the State of New York to the Sheriff
of the County of New York:

Whereas, an application has been made to the Justice granting this warrant by the above named plaintiff, for a warrant of attachment against the property of Lincoln Mine Operating Company, the defendant in the above entitled action, and whereas a summons has been duly issued in this action and it appears to the satisfaction of the Justice granting this warrant, by the verified complaint of the plaintiff and by the affidavit of William L. Schneider, sworn to the 29th day of June, 1938, that the action is brought upon one of the causes of action specified in Section 902 of the Civil Practice Act, and that said cause of action exists in favor of the above named plaintiff against the above named defendant to recover a sum of money only, to-wit, the sum of \$10,000.00 with interest thereon from June 14, 1929, by reason of defendant's liability on the promissory note made and executed by it and now lawfully held and owned by plaintiff, a copy of which note is attached to and made a part of plaintiff's said verified complaint, and it appearing that plaintiff is entitled to recover said sum from the defendant over and above all set-offs and counter-claims known to plaintiff, and [28] whereas it further appears to the satisfaction of the undersigned that plaintiff herein is entitled to a warrant of at-

tachment against the property of the defendant herein upon the ground that the defendant is a foreign corporation and is not a resident of the State of New York, and whereas plaintiff has given the undertaking required by law,

You Are Hereby Commanded and Required to attach and safely keep so much of the Property within your County which the said defendant, Lincoln Mine Operating Company, has or which it may have at any time before final judgment in this action, as will satisfy the plaintiff's said demand as hereinabove set forth, together with costs and disbursements, and that you proceed herein in the manner and make your return herein within the time prescribed by law.

Witness, Hon. Aron Steuer, one of the Justices of said Supreme Court, at the County Court House, in the City and County of New York, on the 12th day of July, 1938.

ARON STEUER,

Justice of the Supreme Court
of the State of New York.

NEWMAN & BISCO,

Attorneys for plaintiff.

Office & P. O. Address 165

Broadway, Borough of Man-
hattan, City of New York.

(On reverse side:)

"Received Powers July 12, 1938, Fee \$5.55. Attachment merged into Judgment execution issued 3-1-39. .03146.

DANIEL E. FINN, JR.,

Sheriff,

WILLIAM M. POWERS,

Deputy." [29]

[Title of New York Court and Cause.]

WARRANT OF ATTACHMENT ISSUED

July 12, 1938, for \$10,000.00.

Inventory, made pursuant to Section 921 of the Civil Practice Act of the property of the Defendant Lincoln Mine Operating Company in the above action so far as the same has come to the hands, possession or knowledge of the Sheriff of the County of New York, by virtue of a Warrant of Attachment issued herein by Hon. Aron Steuer, taken with the assistance of Max Cohen and George Welch two disinterested freeholders, duly appointed and sworn to assist in taking the same, this 22nd day of July, 1938.

A certificate from Huron Holding Corporation, a New York corporation, at 55 Broad Street, City, County and State of New York, that it is the defendant against which judgment was entered in favor of the above named Lincoln Mine Operating Company as plaintiff in the United States District Court for the Dis-

trict of Idaho, Southern Division, on or about March 3, 1938, for \$6,730.70, with interest thereon from March 3, 1938, and that said judgment is still unpaid—subject to the rights of said Huron Holding Corporation on the appeal taken by it from said judgment and now pending in said court.

\$6730.70. [30]

And the aggregate value thereof is appraised by them the sum of Six Thousand and Seven Hundred Thirty and 70/100 Dollars.

GEORGE WELCH,
MAX COHEN,

Appraisers.

County of New York—ss.

I Certify that the foregoing is the inventory and appraisal of the property levied on and attached by me on the 12 day of July, 1938, as the property of the Defendant Lincoln Mine Operating Company under and pursuant to the Warrant of Attachment above described.

DANIEL E. FINN, JR.,
Sheriff of the County of New York. [31]

The People of the State of New York
To the Sheriff of the County of New York,
Greeting:

Whereas, judgment was rendered on the 27th day of February, 1939, in an action in the Supreme Court of the State of New York, between Manufac-

turers Trust Company, plaintiff, and Lincoln Mine Operating Company, defendant, in favor of said Manufacturers Trust Company, plaintiff, against said Lincoln Mine Operating Company, defendant, for the sum of \$15,842.02 as appears to us by the judgment roll filed in the office of the Clerk of the Supreme Court, County of New York, and

Whereas, a transcript of the said judgment was docketed in your county on the 27th day of February, 1939, and the sum of \$15,842.02 is now actually due thereon, and

Whereas, a warrant of attachment was on the 12th day of July, 1938, duly issued in said action, directed to you and a levy having been duly made thereunder upon property of the judgment debtor;

Therefore, We Command You, that you satisfy said judgment out of the personal property attached and if that is insufficient out of the real property attached, and return this execution within sixty (60) days after its receipt by you, to the Clerk of the Supreme Court of the State of New York, County of New York.

Witness, Hon. Timothy A. Leary, one of said Justices of said Supreme Court at the County of New York, the 28th day of February, 1939. [32]

NEWMAN & BISCO,

Attorneys for plaintiff,
Office and P. O. Address, 165
Broadway, Borough of Man-
hattan, City of New York.

(On reverse side of sheet:)

"I have made on the within execution the sum of 4,642.42 and I can find no property, personal or real, whereof I can make the residue.

DANIEL E. FINN, JR.,

Sheriff,

WILLIAM M. POWERS,

Deputy." [33]

EXHIBIT "A"

[Title of New York Court and Cause.]

NOTICE OF PROPERTY ATTACHED

To Huron Holding Corporation,
45 Beaver Street,
Borough of Manhattan,
City of New York.

Please Take Notice, that by virtue of the warrant of attachment issued in this action, a certified copy of which is herewith served upon and left with you, I have levied upon and do hereby levy upon the judgment obtained by the defendant, Lincoln Mine Operating Company, a foreign corporation organized and existing under the laws of the State of Idaho, as plaintiff, against you, Huron Holding Corporation, a New York corporation, as defendant, on the 3rd day of March, 1938, for the sum of \$6,730.70 with interest thereon from March 3, 1938, which judgment was obtained and filed in the United States District Court for the District of

Idaho, Southern Division, on or about March 3, 1938.

Dated, New York, July 12, 1938.

DANIEL E. FINN, JR.,
Sheriff of New York County. [34]

“EXHIBIT A”

July 15, 1938

Daniel E. Finn, Jr., Esq.,
Sheriff, New York County,
Hall of Records,
31 Chambers Street,
New York City.

Dear Sir:

Referring to the certified copy of the warrant of attachment and your notice of property attached, served by you upon us on July 12, 1938, in the action entitled “Supreme Court, New York County, Manufacturers Trust Company, Plaintiff, against Lincoln Mine Operating Company, Defendant”, we beg to inform you that the undersigned, Huron Holding Corporation, is the defendant against which judgment was entered in favor of the above named Lincoln Mine Operating Company, as plaintiff, in the United States District Court for the District of Idaho, Southern Division, on or about March 3, 1938, for the sum of \$6,730.70 with interest thereon from March 3, 1938, and that the said judgment is

still unpaid, subject to our rights on the appeal taken by us from said judgment and now pending in said court.

Very truly yours,

[Corporate Seal] HURON HOLDING
CORPORATION,

(Sgd) LESTER R. BESSELL,
Vice President and
Assistant Treasurer.

Attest:

(Sgd) CHAS. M. CLOSE,
Secretary. [35]

Office of the Sheriff of the County of New York
31 Chambers Street

Nature of Process—Attachment

Manufacturers Trust Co., Plaintiff,

vs.

Lincoln Mine Operating Co.; Defendant.

New York, March 1, 1939

Received from Huron Holding Corp., Four Thousand eight hundred five-55/100 Dollars, in the above-entitled action, as per itemized statement hereon.

DANIEL E. FINN, JR.,

Sheriff.

Per: WILLIAM M. POWERS,

Deputy Sheriff.

\$4,805.55

[Endorsed]: Filed March 13, 1939. [36]

[Title of District Court and Cause.]

**PARTIAL SATISFACTION OF JUDGMENT
AND FULL SATISFACTION OF ATTOR-
NEYS' LIEN THEREON.**

William H. Langroise, Sam S. Griffin, and E. H. Castlerlin, attorneys of record for the above named plaintiff, as such attorneys and for and on behalf of said plaintiff do hereby acknowledge receipt from Huron Holding Corporation, a corporation, the above named defendant, of the sum of \$2747.27 as part payment on, and partial satisfaction of, that certain judgment entered in the above entitled cause and court on March 3, 1938, for the total sum of \$6,730.70, with District Court costs of \$79.42, and costs in the United States Circuit Court of Appeals for the Ninth Circuit in the sum of \$20.00, which said judgment, costs and interest thereon to date hereof is, and said payment is applicable, as follows: [37]

Principal of Judgment.....	\$6,730.70
District Court Costs.....	79.42
Appellate Court Costs.....	20.00
6% Interest to date hereof.....	415.50
<hr/>	
Total	\$7,245.62
Paid as aforesaid.....	\$2,747.27
Balance of principal judgment and costs unsatisfied by such payment.....	\$4,498.35

And said attorneys do further hereby acknowledge receipt of said sum as applicable to, and as

payment to them in full satisfaction of their attorneys' lien against any and all moneys payable by defendant upon said judgment, which lien was filed with the Clerk of the above entitled Court upon the 27th day of January, 1939.

It is understood that the payment of the above sum in satisfaction of said attorney's lien shall not prejudice said Huron Holding Corporation, a corporation, or its surety, the National Surety Corporation, a corporation, from contending that the remainder of said judgment has been otherwise paid.

Dated this 8th day of March, 1939.

WILLIAM H. LANGROISE,

SAM S. GRIFFIN,

E. H. CASTERLIN,

By SAM S. GRIFFIN.

[Endorsed]: Filed March 13, 1939. [38]

[Title of District Court and Cause.]

MOTION FOR JUDGMENT ON APPEAL
BOND AFTER REMAND.

Now comes Lincoln Mine Operating Company, a corporation, the plaintiff in the above entitled cause, and shows to this Court that Huron Holding Corporation, a corporation, the defendant therein, prayed and obtained an appeal from the final judgment in this cause to the United States Circuit Court of Appeals for the Ninth Circuit, all of

which appears from the records of this Court; that the said Huron Holding Corporation, a corporation, for the purposes of said appeal filed herein an appeal and supersedeas bond; that the National Surety Corporation, for and on behalf of the said defendant, did, on the 31st day of May, 1938, execute said appeal and supersedeas bond in the sum of Ten Thousand (\$10,000.00) Dollars, payable to the Lincoln Mine Operating Company, a corporation, and that said bond was approved by Charles C. Cavanah, United States District Judge; that the said appeal has been determined and the said judgment affirmed by the said appellate court, as shown by the mandate of the United States Circuit Court of Appeals for the Ninth Circuit, which was filed in this Court on the 13th day of March, 1939, and which is now presented as a part of this motion;

Wherefore, plaintiff prays that in accordance with the judgment and mandate of the United States Circuit Court of Appeals for the Ninth Circuit, and pursuant to Rule 73(f) of the Federal Rules of Civil Procedure, judgment be entered herein in favor of the plaintiff and against the National Surety [39] Corporation for the amount of said judgment, to-wit: the sum of Six Thousand Seven Hundred Thirty and 70/100 Dollars (\$6,730.70) principal, and Seventy Nine and 42/100 Dollars (\$79.42) costs, with interest from the date of the rendition of said judgment in this Court, to-wit: March 3rd, 1938, and that the plaintiff do have execution therefor and any and all other or-

ders and process in aid of said judgment; and that notice of this motion be given to the said National Surety Corporation, a corporation, pursuant to said Rule 73(f) in the manner therein provided and for such time as this Court prescribed.

A copy of said bond is attached hereto and marked Exhibit "A".

WILLIAM H. LANGROISE,
SAM S. GRIFFIN,
E. H. CASTERLIN.

[Endorsed]: Filed March 14, 1939. [40]

[Title of District Court and Cause.]

ANSWER OF NATIONAL
SURETY CORPORATION

Comes now, the National Surety Corporation, a corporation, and answering the motion of the plaintiff for judgment on appeal bond after remand, admits, alleges and denies as follows:

I.

Admits that the Huron Holding Corporation, a corporation, the defendant in the above entitled cause, prayed and obtained an appeal from the final judgment in the above entitled court to the United States Circuit Court of Appeals for the Ninth Circuit, and that the said Huron Holding Corporation, a corporation, for the purposes of said appeal filed in this action an appeal and supersedeas bond. That

the said National Surety Corporation, for and on behalf of the said defendant, did on the 31st day of May, 1938, execute said appeal and supersedeas bond in the sum of [44] \$10,000.00, payable under the terms and conditions set forth in said bond, a copy of which is attached to said motion, and that the said bond was approved by Charles C. Cavanah, United States District Judge.

II.

Admits that the said appeal has been determined and the said judgment affirmed by said appellate court as shown by the mandate of the United States Circuit Court of Appeals for the Ninth Circuit, which was filed in this court on the 13th day of March, 1939.

Further answering said motion, the said National Surety Corporation, a corporation, alleges that the said judgment obtained by the Lincoln Mine Operating Company against the Huron Holding Corporation, a corporation, was paid in the following manner:

(a) That on the 13th day of March, 1939, the Huron Holding Corporation, a corporation, paid to the said plaintiff and its attorneys the sum of \$2,747.28, the same being payment and satisfaction of a certain attorneys' lien that had been filed by the attorneys for the above named plaintiff, and the said Huron Holding Corporation, a corporation, took and received from the attorneys for said plaintiff a partial satisfaction of said judgment and a full

satisfaction of their lien for attorneys' fees and expenses, which said satisfaction was filed in the above entitled court on the 13th day of March, 1939, and is now a part of the records and files in the above entitled cause, and to which said partial satisfaction reference is hereby made. [45]

(b) That all the rest and residue and remainder of said judgment was paid by the said Huron Holding Corporation upon the 3rd day of March, 1939, when it paid the sum of \$,805.55 to the Sheriff of New York County, State of New York, as garnishee in an action brought in the Supreme Court of the State of New York for New York County, entitled Manufacturers Trust Company, a corporation, plaintiff, vs. Lincoln Mine Operating Company, a corporation, defendant. That the facts concerning said action and said payment are as follows:

1. That on or about the 29th day of June, 1938, the said Manufacturers Trust Company filed an action against the Lincoln Mine Operating Company, the judgment creditor herein, in the Supreme Court of the State of New York, for the County of New York, and caused a warrant of attachment to be issued against any property found in New York County belonging to the said Lincoln Mine Operating Company; that the situs of the judgment obtained in the above entitled cause was in the State of New York by reason of the fact that the judgment creditor, the Huron Holding Corporation, was a citizen and resident of the State of New York.

2. That said warrant of attachment was served upon the Huron Holding Corporation, a corporation, by the Sheriff of New York County on or about the 12th day of July, 1938, and that the said Sheriff by said warrant of attachment attached the said judgment which was entered in this court against the defendant herein, Huron Holding Corporation, a corporation, upon the 3rd day of March, 1938, in the amount of \$6,730.70. [46]

3. That the said Huron Holding Corporation, pursuant to said writ of attachment, on or about the 15th day of July, 1938, executed and delivered to said Sheriff its certificate specifying the indebtedness owing by it to said Lincoln Mine Operating Company upon said judgment.

4. That the said Sheriff of New York County on July 19, 1938, duly filed his report and appraisal of said property so attached.

5. That the said plaintiff herein, Lincoln Mine Operating Company, was duly served with process in the said case pending in the State of New York on July 18, 1938.

6. That the said Lincoln Mine Operating Company, a corporation, the defendant in the New York action, defaulted and failed to appear in the New York court in said cause.

7. That on February 25, 1939, a judgment was recovered in said New York action against the said Lincoln Mine Operating Company in the total amount of \$15,842.02.

8. That thereafter an execution upon said judgment was had against the property attached, to-wit:

The judgment held against the Huren Holding Corporation by the Lincoln Mine Operating Company entered in this court on the 3rd day of March, 1938.

9. That the said Sheriff of New York County, by virtue of said warrant of attachment, judgment and execution on or about the 1st day of March, 1939, collected and received from the Huron Holding Corporation the sum of \$4,805.55. [47]

(c) That the said Huron Holding Corporation, a corporation, the defendant in the above entitled action, did on the 13th day of March, 1939, file in the above entitled cause a motion to have the court make and enter an order satisfying the judgment in the above entitled cause, and did attach to said motion the affidavit of Leonard G. Bisco, to which affidavit was also attached a certified copy of the judgment roll in the case of Manufacturers Trust Company, a corporation, plaintiff, vs. Lincoln Mine Operating Company, a corporation, defendant, which said judgment roll was a true and correct transcript, duly certified to, of the proceedings in said cause in the Supreme Court of New York for New York County. That also attached to said affidavit of Leonard G. Bisco and marked Exhibit B was a certified copy of the warrant of attachment, and there was also attached to said affidavit of Leonard G. Bisco a certified copy of the inventory of attached property which is marked Exhibit C.

That there is also attached to the said motion of the Huron Holding Corporation filed in the above entitled court on the 13th day of March, 1939, the affidavit of William L. Schneider, to which is attached copies of the following named papers in the case pending in the Supreme Court of New York for the County of New York, entitled Manufacturers Trust Company, plaintiff; vs. Lincoln Mine Operating Company, defendant, said papers being marked as follows:

Exhibit A: Copy of summons and complaint.

Exhibit B: Copy of warrant of attachment and affidavit in aid thereof.

Exhibit C: Copy of affidavit which shows service upon the Lincoln Mine Operating Company. [48]

Exhibit D: Copy of transcript of judgment entered in said Supreme Court of New York, County of New York, in said cause.

That there is also attached to said motion for satisfaction of judgment, which said motion was filed on the 13th day of March, 1939, as Exhibit 3, the affidavit of Lester R. Bessell, the Vice-President and Assistant-Treasurer of the Huron Holding Corporation, a corporation, which affidavit shows the attachment of \$6,730.70 with interest thereon from March 3, 1938, the same being the amount of the judgment obtained in this court against the said Huron Holding Corporation, and that to the said affidavit of Lester R. Bessell is attached the receipt of John T. Higgins, Sheriff of New York County, State of New York, showing the payment by said

Huron Holding Corporation to said Sheriff in said cause of the amount of \$4,805.55.

(d) That the said payment by said Huron Holding Corporation of said \$4,805.55 as shown by the said affidavits and exhibits attached to said motion, and the payment of said \$2,747.28 more than exceeds the total amount of principal and interest due on the said judgment obtained by the plaintiff herein against said Huron Holding Corporation.

(e) That this answering surety corporation hereby refers to and incorporates herein by this reference all of the papers referred to and filed herein as a part of the motion of the said Huron Holding Corporation to have said judgment satisfied, and particularly hereby refers to and by this reference incorporates herein the affidavit of Leonard G. Bisco and the exhibits attached to said affidavit, and hereby refers to and incorporates herein the affidavit of William L. Schneider and the exhibits attached thereto, and [49] also the affidavit of Lester R. Bessell and the exhibits attached thereto, and hereby incorporates herein by this reference the affidavit of Oscar W. Worthwine filed in connection with the said motion of Huron Holding Corporation to satisfy said judgment, and hereby by this reference incorporates herein the partial satisfaction of judgment and full satisfaction of attorneys' lien filed herein on March 13, 1939, by the attorneys for the plaintiff herein, Lincoln Mine Operating Company, a corporation.

Wherefore, said National Surety Corporation, having fully answered the motion of the said plaintiff, Lincoln Mine Operating Company, a corporation, prays that the court make and enter an order herein satisfying the judgment obtained by the Lincoln Mine Operating Company, a corporation, against the Huron Holding Corporation, a corporation, on the 3rd day of March, 1938, and for such other and further relief as to the court seems meet and just in the premises.

JESS HAWLEY,
OSCAR W. WORTHWINE,
HAWLEY & WORTHWINE,

Residence: Boise, Idaho,
Attorneys for National
Surety Corporation.

(Duly verified.)

[Endorsed]: Filed March 22, 1939. [50]

[Title of District Court and Cause.]

AMENDMENT TO MOTION FOR SATISFAC-
TION OF JUDGMENT.

Comes now, the defendant, Huron Holding Corporation, and after leave of court first had and obtained, does hereby amend its motion for satisfaction of judgment filed in the above entitled court and cause by adding thereto as paragraph III the following:

“III.

That the promissory note on which the Manufacturers Trust Company obtained judgment against the Lincoln Mine Operating Company, as hereinbefore detailed, was under and by virtue of the laws of the State of Idaho outlawed and subject to the plea of the statute of limitations as provided by Section 5-201 I. C. A.:

“Civil actions can only be commenced within the periods prescribed in this chapter after the cause of action shall have accrued, except when, in special cases, a different limitation is prescribed by statute.” [51]

And the related statute, Section 5-216 I. C. A.:

“Action on written contract.—Within five years:

“An action upon any contract, obligation or liability founded upon an instrument in writing.”

And that said promissory note was due on June 14, 1929, under the statutes and decisions of the State of Idaho, and therefore an action could not have been successfully maintained by the Manufacturers Trust Company against the defendant in a state court of the State of Idaho or in the United States District Court of the State of Idaho, and no judgment could have been obtained, and it was without remedy for the recovery of the indebtedness represented by the said promissory note excepting by the action brought in the State of New York and

upon which judgment was therein obtained as herein set forth."

JESS HAWLEY,
OSCAR W. WORTHWINE,
HAWLEY & WORTHWINE,

Residence: Boise, Idaho,
Attorneys for Defendant.

[Endorsed]: Filed March 29, 1939. [52]

[Title of District Court and Cause.]

**AMENDMENT TO ANSWER OF NATIONAL
SURETY CORPORATION**

Comes now, the National Surety Corporation, a corporation, and after leave of court first had and obtained, does hereby amend its answer filed in the above entitled court and cause by adding thereto as paragraph III the following:

"III.

That the promissory note on which the Manufacturers Trust Company obtained judgment against the Lincoln Mine Operating Company, as hereinbefore detailed, was under and by virtue of the laws of the State of Idaho outlawed and subject to the plea of the statute of limitations as provided by Section 5-201 I. C. A.:

"Civil actions can only be commenced within the periods prescribed in this chapter after the cause of action shall have accrued, except

when, in special cases, a different limitation is prescribed by statute." [53]

And the related statute, Section 5-216 I. C. A.:

"Action on written contract.—Within five years:

"An action upon any contract, obligation or liability founded upon an instrument in writing."

And that said promissory note was due on June 14, 1929, under the statutes and decisions of the State of Idaho, and therefore an action could not have been successfully maintained by the Manufacturers Trust Company against the defendant in a state court of the State of Idaho or in the United States District Court of the State of Idaho, and no judgment could have been obtained, and it was without remedy for the recovery of the indebtedness represented by the said promissory note excepting by the action brought in the State of New York and upon which judgment was therein obtained as herein set forth."

JESS HAWLEY
OSCAR W. WORTHWINE
HAWLEY & WORTHWINE

Residence: Boise, Idaho.
Attorneys for National Surety
Corporation.

(Service accepted.)

[Endorsed]: Filed March 29, 1939. [54]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW ON MOTION FOR JUDGMENT
AGAINST NATIONAL SURETY CORPO-
RATION.

A motion for judgment against the National Surety Corporation, the surety on the supersedeas bond on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, having been duly filed in the above entitled Court and cause, and the National Surety Corporation having filed an answer to said motion, the matter came regularly on for hearing before the Court and the Judge thereof in open Court at Pocatello, Idaho, on the 21st day of March, 1939, the plaintiff being represented by its counsel, E. H. Casterlin, Esquire, and the National Surety Corporation being represented by its counsel, Jess Hawley, Esquire. The cause was heard on the pleading and documentary evidence and submitted to the Court for decision and now, being duly advised as to the law and the facts, the Court finds as follows:

I.

That the Huron Holding Corporation, a corporation, the defendant, prayed and obtained an appeal from the final judgment in this cause to the United States Circuit Court of Appeals for the Ninth Circuit, all of which appears from the records of this Court; that the said Huron Holding Corporation, a corporation, for the purposes of

said appeal filed herein an appeal and supersedeas bond; that the National Surety Corporation, for and on behalf of the said defendant, did, on the 31st day of May, 1938, execute said appeal and supersedeas bond in the sum of Ten Thousand (\$10,000.00) Dollars, payable to the Lincoln Mine Operating Company, a corporation, and that said bond was approved by Charles C. Cavanah, United States District Judge; that the said appeal has been determined and the said judgment affirmed by the said appellate court, as shown by the mandate of the United States Circuit Court of Appeals for the Ninth Circuit, which was filed in this Court on the 13th day of March, 1939, and which is now presented as a part of said motion.

II.

That on the 13th day of March, 1939, the Huron Holding Corporation, a corporation, paid to the said plaintiff and its attorneys [63] the sum of \$2,747.28, the same being payment and satisfaction of a certain attorneys' lien that had been filed by the attorneys for the above named plaintiff, and the said Huron Holding Corporation, a corporation, took and received from the attorneys for said plaintiff a partial satisfaction of said judgment and a full satisfaction of their lien for attorneys' fees and expenses, which said satisfaction was filed in the above entitled Court on the 13th day of March, 1939, and is now a part of the records and files in the above entitled cause;

That all the rest and residue and remainder of said judgment was paid by the said Huron Holding Corporation upon the 3rd day of March, 1939, when it paid the sum of \$4,805.55 to the Sheriff of New York County, State of New York, as garnishee in an action brought in the Supreme Court of the State of New York for New York County, entitled Manufacturers Trust Company, a corporation, plaintiff, vs. Lincoln Mine Operating Company, a corporation, defendant. That the facts concerning said action and said payment are as follows:

1. That on or about the 29th day of June, 1938, the said Manufacturers Trust Company filed an action against the Lincoln Mine Operating Company, the judgment creditor herein, in the Supreme Court of the State of New York, for the County of New York, and caused a warrant of attachment to be issued against any property found in New York County belonging to the said Lincoln Mine Operating Company; that the situs of the judgment obtained in the above entitled cause was in the State of New York by reason of the fact that the judgment creditor, the Huron Holding Corporation, was a citizen and resident of the State of New York, and the Supreme Court of the State of New York, County of New York, secured jurisdiction in the case of the Manufacturers Trust Company, plaintiff, against Lincoln Mine Operating Company, defendant.

2. That said warrant of attachment was served upon the Huron Holding Corporation, a corporation, by the Sheriff of New York County on or about the 12th day of July, 1938, and that the said Sheriff by said warrant of attachment attached the said judgment which was entered in this court against the defendant herein, Huron Holding Corporation, a corporation, upon the 3rd day of March, 1938, in the amount of \$6,730.70. [64]

3. That the said Huron Holding Corporation, pursuant to said writ of attachment, on or about the 15th day of July, 1938, executed and delivered to said Sheriff its certificate specifying the indebtedness owing by it to said Lincoln Mine Operating Company upon said judgment.

4. That the said Sheriff of New York County on July 19, 1938, duly filed his report and appraisal of said property so attached.

5. That on June 28, 1938, summons was issued in the above entitled action brought by the Manufacturers Trust Company, plaintiff, against Lincoln Mine Operating Company, defendant, and the same was served by Marvin E. Wright, Deputy Sheriff of Ada County, State of Idaho, on July 18, 1938, at the Owyhee Hotel in Boise, Ada County, State of Idaho, on defendant Lincoln Mine Operating Company, an Idaho corporation, by delivering to and leaving a true copy of said summons with William I. Phillips, President of said Lincoln Mine Operating Company.

6. That the said Lincoln Mine Operating Company, a corporation, the defendant in the New York action, defaulted and failed to appear in the New York Court in said cause.

7. That on February 25, 1939, a judgment was recovered in said New York Action against the said Lincoln Mine Operating Company in the total amount of \$15,842.02.

8. That thereafter an execution upon said judgment was had against the property attached, to-wit:

The judgment held against the Huron Holding Corporation by the Lincoln Mine Operating Company entered in this court on the 3rd day of March, 1938.

9. That the said Sheriff of New York County, by virtue of said warrant of attachment, judgment and execution on or about the 1st day of March, 1939, collected and received from the Huron Holding Corporation the sum of \$4,805.55.

That the said Huron Holding Corporation, a corporation, the defendant in the above entitled action, did on the 13th day of March, 1939, file in the above entitled cause a motion to have the Court make and enter an order satisfying the judgment in the above entitled cause, and did attach to the said motion the [65] affidavit of Leonard G. Bisco, to which affidavit was also attached a certified copy of the judgment roll in the case of Manufacturers Trust Company, a corporation, plaintiff, vs. Lincoln

Mine Operating Company, a corporation, defendant, which said judgment roll was a true and correct transcript duly certified to, of the proceedings in said cause in the Supreme Court of New York for New York County. That also attached to said affidavit of Leonard G. Bisco and marked Exhibit B was a certified copy of the warrant of attachment, and there was also attached to said affidavit of Leonard G. Bisco a certified copy of the inventory of attached property which is marked Exhibit C.

That there is also attached to the said motion of the Huron Holding Corporation filed in the above entitled Court on the 13th day of March, 1939, the affidavit of William L. Schneider, to which is attached copies of the following named papers in the case pending in the Supreme Court of New York, County of New York, entitled Manufacturers Trust Company, plaintiff, vs. Lincoln Mine Operating Company, defendant, said papers being marked as follows:

Exhibit A: Copy of summons and complaint.

Exhibit B: Copy of warrant of attachment and affidavit in aid thereof.

Exhibit C: Copy of affidavit which shows service upon the Lincoln Mine Operating Company.

Exhibit D: Copy of transcript of judgment entered in said Supreme Court of New York, County New York in said cause.

That there is also attached to said motion for satisfaction of judgment, which said motion was filed on the 13th day of March, 1939, as Exhibit 3, the affidavit of Lester R. Bessell, the Vice-President and Assistant Treasurer of the Huron Holding Corporation, a corporation, which affidavit shows the attachment of \$6,730.70 with interest thereon from March 3, 1938, the same being the amount of the judgment obtained in this court against the said Huron Holding Corporation, and that to the said affidavit of Lester R. Bessell is attached the receipt of John T. Higgins, Sheriff of New York County, State of New York, showing the payment by said Huron Holding Corporation to said Sheriff in said cause of the amount of \$4,805.55; that the facts stated in said affidavits are true. [66]

That the said payment by said Huron Holding Corporation of said \$4,805.55 as shown by the said affidavits and exhibits attached to said motion, and the payment of said \$2,747.28 more than exceeds the total amount of principal and interest due on the said judgment obtained by the plaintiff herein against said Huron Holding Corporation, and the said payments made by the said defendant are not voluntary and were binding upon the Lincoln Mine Operating Company and were in full satisfaction of said judgment of this Court.

III.

That there was filed in the above entitled Court and cause a motion by the defendant, Huron Hold-

ing Corporation, to have said judgment satisfied and all of the papers referred to and filed in this Court and cause as a part of the said motion were specifically referred to and incorporated in the answer of the National Surety Corporation, and, furthermore, for the purpose of the hearing the said motion of the defendant, Huron Holding Corporation, was united and joined with the hearing of this motion for judgment against the National Surety Corporation, and the evidence introduced in each hearing was stipulated and agreed as part of the record to be considered in connection with the other motion and so have been considered by the Court.

CONCLUSIONS OF LAW

As Conclusions of Law from the foregoing Findings of Fact, the Court concludes:

1. That the judgment of the plaintiff against the defendant has been fully paid and satisfied by the defendant, Huron Holding Corporation.

2. That the National Surety Corporation is under no liability to the plaintiff corporation by reason of the supersedeas bond by it given, executed and filed on appeal to the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled cause.

3. That the said motion for judgment on said appeal bond made by the said plaintiff should be and hereby is denied.

Dated this 4th day of May, 1939.

CHARLES C. CAVANAH

United States District Judge.

[Endorsed]: Filed May 4, 1939. [67]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF
LAW ON DEFENDANT'S MOTION FOR
SATISFACTION OF JUDGMENT

The defendant, Huron Holding Corporation, having filed its motion for satisfaction of judgment in the above entitled Court and cause, and the plaintiff, Lincoln Mine Operating Company, having filed its answer thereto, and a hearing on the said motion having been regularly had before the Court in Pocatello, Idaho, on the 21st day of March, 1939, the defendant being represented by its counsel, Jess Hawley, Esquire, and the plaintiff being represented by its counsel, E. H. Casterlin, Esquire, and evidence having been introduced and the matter being finally submitted to the Court, and the Court, being fully advised as to the law and the facts, does now find as follows:

I.

That the said defendant, Huron Holding Corporation, a corporation organized and existing under the laws of the State of New York, has paid the sum of \$4,805.55 upon said judgment; that said

sum was paid by said defendant upon said judgment upon about the first day of March, 1939, under a levy and warrant of attachment issued out of the Supreme Court of the State of New York, County of New York, in the case of Manufacturers Trust Company, a corporation, plaintiff, vs. Lincoln Mine Operating Company, a corporation, defendant, which case is pending in the Supreme Court of the State of New York, for the County of New York, and in which said cause the following proceedings were had:

(a) That on or about the 29th day of June, 1938, the said Manufacturers Trust Company filed an action against the Lincoln Mine Operating Company, the judgment creditor herein, in the Supreme Court of the State of New York, for the County of New York, and caused a warrant of attachment to be issued against any property found in New York County belonging to the said Lincoln Mine Operating Company; that the situs of the judgment obtained in the above entitled cause was in the State of New York by reason of the fact that the judgment creditor, [68] the Huron Holding Corporation, was a citizen and resident of the State of New York, and the Supreme Court of the State of New York, County of New York, secured jurisdiction in the case of Manufacturers Trust Company, plaintiff, against Lincoln Mine Operating Company, defendant.

(b) That said warrant of attachment was served upon the Huron Holding Corporation, a corpora-

tion, by the Sheriff of New York County on or about the 12th day of July, 1938, and that the said Sheriff by said warrant of attachment attached the said judgment which was entered in this court against the defendant herein, Huron Holding Corporation, a corporation, upon the 3rd day of March, 1938, in the amount of \$6,730.70.

(c) That the said Huron Holding Corporation, pursuant to said writ of attachment, on or about the 15th day of July, 1938, executed and delivered to said Sheriff its certificate specifying the indebtedness owing by it to said Lincoln Mine Operating Company upon said judgment.

(d) That the said Sheriff of New York County on July 19, 1938, duly filed his report and appraisal of said property so attached.

(e) That on June 28, 1938, summons was issued in the above entitled action brought by the Manufacturers Trust Company, plaintiff, against Lincoln Mine Operating Company, defendant, and the same was served by Marvin E. Wright, Deputy Sheriff of Ada County, State of Idaho, on July 18, 1938, at the Owyhee Hotel in Boise, Ada County, State of Idaho, on defendant Lincoln Mine Operating Company, an Idaho corporation, by delivering to and leaving a true copy of said summons with William I. Phillips, President of said Lincoln Mine Operating Company.

(f) That the said Lincoln Mine Operating Company, a corporation, the defendant in the New York

action, defaulted and failed to appear in the New York court in said cause.

(g) That on February 25, 1939, a judgment was recovered in said New York action against the said Lincoln Mine Operating Company in the total amount of \$15,842.02. [69]

(h) That thereafter an execution upon said judgment was had against the property attached, to-wit:

The judgment held against the Huron Holding Corporation by the Lincoln Mine Operating Company entered in this court on the 3rd day of March, 1938.

(i) That the said Sheriff of New York County, by virtue of said warrant of attachment, judgment and execution, on or about the first day of March, 1939, collected and received from the Huron Holding Corporation the sum of \$4,805.55, which is the amount of the judgment obtained in this court, together with interest and costs, less one-third thereof, which said one-third is claimed by the attorneys for the plaintiff, Lincoln Mine Operating Company, as attorneys' fees by virtue of a lien filed by them on the judgment in the above entitled Court.

(j) That the said Sheriff of New York County has paid to the Manufacturers Trust Company the amount so collected by him, less his legal fee and expenses, to-wit, the sum of \$4,612.42, which amount the Manufacturers Trust Company has applied upon the judgment entered and recovered by it in

the Supreme Court of New York for New York County against the Lincoln Mine Operating Company.

II.

That on or about the 27th day of January, 1939, W. H. Langroise, Sam S. Griffin, and E. H. Casterlin, attorneys for the Lincoln Mine Operating Company, a corporation, the plaintiff in this action, served upon the Huron Holding Corporation, a corporation, and the National Surety Corporation, a corporation, as surety upon a supersedeas bond in the above entitled action, and filed in the above entitled court a notice of attorneys' lien wherein said attorneys claimed a lien for their services upon the cause of action of the plaintiff in the above entitled action and any judgment rendered therein for the agreed sum of $33\frac{1}{3}\%$ of the recovery in said action, either in money or in property, together with costs and expenses due such attorneys in said cause or connected therewith, and that said attorneys claim that they have \$367.23 due them from the said plaintiff as costs and expenses in the prosecution of said action. That one-third of said judgment with interest thereon amounts to the sum of \$2,380.05. That the said defendant herein, Huron Holding Corporation, [70] has paid to said William H. Langroise, Sam S. Griffin and E. H. Casterlin, the said sum of \$2,380.05, and in addition to the payment of said sum has paid to said attorneys on their claim for costs and expenses the said further

sum of \$367.23, or a total of \$2,747.28, and the said attorneys have satisfied their lien claim by written satisfaction filed in the above entitled cause, which written satisfaction shows the payment to said attorneys of the said sum of \$2,747.28.

III.

That the exhibits attached to the motion of the defendant for satisfaction of judgment are duly certified according to law and the rules of this Court; that the Supreme Court of the State of New York, County of New York, had jurisdiction and its proceedings, as heretofore set forth, were within its jurisdiction and valid and are entitled to full faith and credit; that the matters of fact set forth in the exhibits and affidavits of the defendant are true.

IV.

That the payments made by the said defendant were not voluntary and were binding upon the Lincoln Mine Operating Company and were in satisfaction of the judgment of this Court.

V.

That payment has been made in full of the judgment obtained by the plaintiff, Lincoln Mine Operating Company, against the defendant, Huron Holding Corporation, in the manner above stated.

VI.

That there was filed in the above entitled Court and cause a motion by the plaintiff, Lincoln Mine

Operating Company, to have judgment entered against the National Surety Corporation, and for the purpose of the hearing the said motion for judgment against the National Surety Corporation was united and joined with the defendant's motion for satisfaction of judgment, and the evidence introduced in each hearing was stipulated and agreed as part of the record to be considered in connection with the other motion and so has been considered by the Court. [71]

CONCLUSIONS OF LAW

As Conclusions of Law from the foregoing Findings of Fact, the Court concludes:

1. That the judgment of this Court entered on the 3rd day of March, 1938, and affirmed by the Circuit Court of Appeals of the Ninth Circuit, has been fully paid and satisfied by the defendant, Huron Holding Corporation.

2. That the said defendant is entitled to have the said judgment satisfied in full and to have the judgment and order of this Court to that effect.

Dated this 4th day of May, 1939.

CHARLES C. CAVANAH

United States District Judge.

[Endorsed]: Filed May 4, 1939. [72]

[Title of District Court and Cause.]

**JUDGMENT AND ORDER ON MOTION FOR
JUDGMENT AGAINST NATIONAL SURE-
TY CORPORATION**

The motion of the plaintiff, Lincoln Mine Operating Company, a corporation, for judgment against the National Surety Corporation, a corporation, having been filed in the above entitled Court and cause and having been heard and considered, and Findings of Fact and Conclusions of Law having been made, entered and filed in the matter;

Now, therefore, it is hereby ordered, adjudged and decreed that the said motion be denied and that the plaintiff take nothing by reason thereof.

Dated this 4th day of May, 1939.

CHARLES C. CAVANAH

United States District Judge.

[Endorsed]: Filed May 4, 1939. [73]

[Title of District Court and Cause.]

**JUDGMENT ON DEFENDANT'S MOTION
FOR SATISFACTION OF JUDGMENT.**

The defendant, Huron Holding Corporation, having heretofore filed its motion for satisfaction of judgment in the above entitled Court and cause, and the matter having been heard, and Findings of Fact and Conclusions of Law having been made, entered and filed:

Now, therefore, it is hereby ordered, adjudged and decreed that the judgment entered in the above entitled Court and cause on March 3, 1938, in favor of the plaintiff, Lincoln Mine Operating Company, a corporation, and against the defendant, Huron Holding Corporation, a corporation, is fully paid and satisfied, and the Clerk of this Court is hereby ordered to make and enter a satisfaction and release in full of said judgment upon the records of this Court.

Dated this 4th day of March, 1939.

CHARLES C. CAVANAH

United States District Judge.

[Endorsed]: Filed May 4, 1939. [74]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Lincoln Mine Operating Company, a corporation, the above named plaintiff, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from that certain Judgment on Defendant's Motion for Satisfaction of Judgment, made and entered in this action on May 4th, 1939, and from that certain Judgment and Order on Motion for Judgment against National Surety Corporation, made and entered herein on May 4th, 1939, and from the whole of the said respective judgments and orders.

Dated August 3, 1939.

WILLIAM H. LANGROISE

SAM S. GRIFFIN

ERLE H. CASTERLIN

Attorneys for Plaintiff.

Residences: Boise, Idaho.

(Service by copy of Notice of Appeal mailed to Messrs. Hawley and Worthwine on July 3, 1939.)

[Endorsed]: Filed August 3, 1939. [75]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK OF UNITED
STATES DISTRICT COURT TO TRAN-
SCRIPT OF RECORD

United States of America,
District of Idaho—ss.

I, W. D. McReynolds, Clerk of the District Court of the United States, for the District of Idaho, do hereby certify the foregoing typewritten pages numbered 1 to 85, inclusive, to be a full, true and correct copy of so much of the records, papers and proceedings in the above entitled cause as are necessary to the hearing of the appeal therein in the United States Circuit Court in accord with designation of contents of record on appeal of the appellant, as the same remain on file and of record in the office of the Clerk of said District Court, and that the same constitutes the record on the

appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify, that the fees of the Clerk of this Court for preparing and certifying the foregoing typewritten record amount to the sum of \$13.60, and that the same have been paid in full by the appellant.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court, this 21st day of August, 1939.

[Seal]

W. D. McREYNOLDS,

Clerk. [85]

[Endorsed]: No. 9285. United States Circuit Court of Appeals for the Ninth Circuit. Lincoln Mine Operating Company, a corporation, Appellant, vs. Huron Holding Corporation, a corporation, and National Surety Corporation, a corporation, Appellees. Transcript of Record Upon Appeal from the District Court of the United States for the District of Idaho, Southern Division.

Filed September 5, 1939.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

United States Circuit Court of Appeals for the
Ninth Circuit.

No. 9285

LINCOLN MINE OPERATING COMPANY, a
corporation,

Appellant,

vs.

HURON HOLDING CORPORATION, a corpora-
tion, and NATIONAL SURETY CORPORA-
TION,

Appellees.

STATEMENT OF POINTS UNDER RULE 19

Comes now the above named appellant and files
its statement of points on which it will rely on the
appeal in this matter.

1.

The court erred in the Findings of Fact and Con-
clusions of Law entered on Motion for Satisfaction
of Judgment in the following respects:

(a) By finding that the Huron Holding Corpo-
ration has paid \$4805.55, or any sum, on the judg-
ment of March 3, 1938, under attachment proceed-
ings in the Supreme Court of New York.

(b) By finding that the situs of the judgment
of March 3, 1938, made and entered by the court
below was in the state of New York.

(c) By finding that the Supreme Court of New
York acquired jurisdiction of the Lincoln Mine Op-

erating Company in the action brought against it by the Manufacturers Trust Company.

(d) By finding that the sheriff in New York attached the judgment of the court below entered March 3, 1938, in the action commenced in the Supreme Court of the State of New York by the Manufacturers Trust Company against the Lincoln Mine Operating Company.

(e) By finding that the Supreme Court of the State of New York acquired jurisdiction of the cause of action brought by the Manufacturers Trust Company against the Lincoln Mine Operating Company.

(f) By finding that the payment made by the Huron Holding Corporation to the Manufacturers Trust Company is binding upon the Lincoln Mine Operating Company and is in satisfaction of the judgment entered by the lower court.

(g) By finding that the said judgment of March 3, 1938, entered in the court below is paid in full.

(h) By concluding that the said judgment of March 3, 1938, in the court below is paid in full.

(i) By concluding that the said judgment of March 3, 1938, should be satisfied.

2.

The court erred in the Findings of Fact and Conclusions of Law entered on Motion for Judgment on appeal bend in the following respects:

(a) By finding that the judgment of March 3, 1938, of the court below was paid in part by the

Huron Holding Corporation as garnishee in the action Manufacturers Trust Company against Lincoln Mines Operating Company in the Supreme Court of the State of New York.

(b) By finding that the situs of the judgment of March 3, 1938, in the court below was in the state of New York.

(c) By finding that the Supreme Court of the State of New York gained jurisdiction of the cause Manufacturers Trust Company against Lincoln Mine Operating Company.

(d) By finding that the sheriff of New York attached the judgment of March 3, 1938, entered in the court below.

(e) By finding that a judgment was obtained in the Supreme Court of the State of New York against the Lincoln Mine Operating Company.

(f) By finding that all of the matters stated in the affidavits attached to the Motion to Satisfy Judgment in the court below, in respect of attachment and execution, are true, so far as the affidavits certified to this Court are concerned.

(g) By finding that the payment made by the Huron Holding Corporation to the Manufacturers Trust Company is in satisfaction of the judgment of March 3, 1938, entered in the court below, and binding on the Lincoln Mine Operating Company.

(h) By concluding that the judgment of March 3, 1938, of the court below is fully paid.

(i) By concluding that the National Surety Corporation is not liable on its supersedeas bond filed in the court below.

3.

That both judgments entered in the court below on May 24th, 1939, on the motions designated in Paragraphs 1 and 2 above are contrary to law.

4.

That the evidence is wholly insufficient to sustain the respective Findings of Fact and Conclusions of Law and to support the respective judgments, in the following respects:

(a) The evidence does not show that the Supreme Court of the State of New York acquired jurisdiction over the judgment of March 3, 1938, entered in the court below, by attachment proceedings or otherwise.

(b) The evidence does not show that the situs of the judgment of the court below was or is in the state of New York.

(c) The evidence does not show that the Supreme Court of the State of New York acquired jurisdiction of the Lincoln Mine Operating Company.

(d) The evidence does not show that the judgment of March 3, 1938, entered in the court below has been paid to any extent over and above the amount specified in the satisfaction of attorneys' lien.

(e) The evidence conclusively show the contrary of (a), (b), (c) and (d) last above.

DESIGNATION

That part of the record necessary for the consideration of the foregoing are: pages refer to clerk's certified record,

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WILLIAM H. LANGROISE,

SAM S. GRIFFIN,

ERLE H. CASTERLIN,

Attorneys for Appellant.

Residence and Post Office:

Boise, Idaho.

Service of the foregoing and receipt of copy this
6th day of September, 1939, is hereby acknowledged.

JESS HAWLEY,

OSCAR W. WORTHWINE,

Attorney for both Appellees.

Residence and Post Office:

Boise, Idaho.

[Endorsed]: Filed Sept. 8, 1939.

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No. 9285

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

LINCOLN MINE OPERATING COMPANY,
a corporation,

Appellant,

vs.

**HURON HOLDING CORPORATION, a corpo-
ration, and NATIONAL SURETY COR-
PORATION, a corporation,**

Appellees.

**Upon Appeal from the District Court of the United
States for the District of Idaho,
Southern Division**

**PROCEEDINGS HAD IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.**

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United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Friday, February
23, 1940.

Before: Denman, Mathews and Healy,
Circuit Judges.

[Title of Cause.]

ORDER OF SUBMISSION

Ordered appeal in above cause argued by Mr.
Sam S. Griffin, counsel for appellant, and by Mr.
Jess Hawley, counsel for appellees, and submitted
to the court for consideration and decision.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Tuesday, April 30,
1940.

Before: Denman, Mathews and Healy,
Circuit Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION
AND FILING AND RECORDING OF
JUDGMENT.

By direction of the Court, Ordered that the type-
written opinion this day rendered by this court in
above cause be forthwith filed by the clerk, and that
a judgment be filed and recorded in the minutes of
this court in accordance with the opinion rendered.

[Title of Circuit Court of Appeals and Cause.]

Upon Appeal from the District Court of the
United States for the District of Idaho, South-
ern Division.

OPINION

Before: Denman, Mathews and Healy,
Circuit Judges.

Denman, Circuit Judge:

This is an appeal from two judgments of the United States District Court for the District of Idaho, Southern Division, both rendered after our affirmance of a judgment of the district court entered by it on March 3, 1938, in favor of appellant, in which were liquidated the damages in an action for claim and delivery. One of the judgments now appealed from is in favor of appellee Huron Holding Corporation, a New York corporation, hereafter called Huron, adjudging as paid and satisfied the judgment of March 3, 1938, against Huron and in favor of appellant Lincoln Mine Operating Company, an Idaho corporation, hereafter called Lincoln. The other judgment appealed from is one denying Lincoln's motion for judgment against appellee National Surety Corporation, on its undertaking given for a supersedeas on Huron's unsuccessful appeal from the judgment of March 3, 1938.

The district court held satisfied its judgment of March 3, 1938, because of a payment by Huron to a third party claimed to have a lien on the judgment created under an attachment process of a

New York court. Hence, the district court denied a motion for execution against Huron and for a judgment against the Surety Corporation on its supersedeas undertaking.

Lincoln contends the district court erred in holding that a purported New York state court attachment of a judgment of a United States court, pending appeal thereon, can deprive the federal court either (a) of its right to cause execution thereon after affirmance or (b) of the right to grant the further relief of a summary judgment on the undertaking given for a supersedeas. Lincoln further contends that the New York attachment is invalid because (a) a foreign judgment while on appeal is not attachable under the laws of New York and (b) on appeal, a judgment based on a tort claim ceases to be a final judgment merging the unliquidated damages into a judgment debt and, hence, is not attachable under the New York law. Our disposition of the first contention makes it unnecessary to consider the others.

Our affirmance* in Huron's appeal to this court from the judgment of March 3, 1938, was on February 7, 1939. Our mandate commanding execution of the judgment and other further proceedings in the district court was filed in the district court on March 13, 1939. Under Idaho law, Lincoln's attorneys were entitled to a lien on Lincoln's judgment for their one-third contingent fee and costs. The

*101 F. (2d) 458.

lien was filed and Huron paid the attorneys, thus satisfying the judgment to that extent. The contests here concern the satisfaction of a balance of \$4,805.55.

While the appeal from the district court's judgment of March 3, 1938, was pending in this court, Lincoln, on June 29, 1938, was sued in New York by Manufacturers Trust Company, a New York corporation, hereafter called Manufacturers, upon Lincoln's promissory note to Manufacturers for \$10,000 and interest. No personal service was had on Lincoln but Manufacturers published summons and served a copy of the summons and complaint on Lincoln in Idaho, and attachment process was issued and served on Huron in New York purporting to attach Lincoln's *judgment*† (not Lincoln's cause of action) of the Idaho district court against Huron. Judgment in Manufacturers New York suit against Lincoln in the sum of \$15,842.02 was rendered on February 27, 1939, that is to say, after our affirmance on appeal in the instant suit but before the filing on March 13, 1939, of our mandate to the Idaho district court for execution and other action there. The New York court's execution was issued on February 28, 1939, and on March 1, 1939, Huron paid the sheriff the \$4,805.55.

It is upon these undisputed facts that the Idaho district court held the payment by Huron to the sheriff in Manufacturers New York suit of \$4,-

†Italics are by the Court.

805.55, the unpaid balance of the judgment of March 3, 1938, completely satisfied it, and held also that it would not enter judgment for that or any amount against National Surety Corporation on its supersedeas undertaking.

So far as Lincoln's claim of the invalidity of the New York attachment of a federal or any other foreign judgment is based on the contention that a judgment of a trial court ceases to be final when on appeal, it cannot be sustained. *Deposit Bank v. Frankfort*, 191 U. S. 499, 511. Supersedeas simply stays execution of the judgment but does not change its final quality.

Neither the district court nor Huron seriously question that federal judgments, as well as the judgments of those states in which their courts cannot garnish judgments of other states, have been held not subject to garnishment in foreign jurisdictions. *Wabash Railroad Co. v. Tourville*, 179 U. S. 322, (Missouri judgment garnished in Illinois); *U. S. Shipping Board & Emergency Fleet Corp. v. Hirsh Lumber Co.*, (CA DC) 35 F. (2d) 1010, 1011, (judgment of United States district court of Florida garnished in Sup. Ct. District of Columbia); *Mack v. Winslow* (CCA-6) 59 F. 316, 319, (federal judgment garnished in state court); *Henry v. Gold Park Mining Co.* (CC Colo.) 15 F. 649, 650, (same); *Thomas v. Wooldridge* (Bradley, C. Jus.) 23 Fed. Cas. 986, 987, (same); *Franklin v. Ward* (Story, C. J.) 9 Fed. Cas. 711, (same). Cf. *Wallace v. McConnell*, 13 Peters, 136, 150, (gar-

nishment by state court of cause of action in federal court before judgment does not stay proceedings in federal court.) Freeman Judgments, 7 Ed. §622.

The district court below holds these decisions not applicable because of *Erie Railway Company v. Tompkins*, 304 U. S. 64. That decision it contends makes the validity of the attachment of the Idaho federal judgment determinable by the law of New York, which is claimed to be that the attachment is valid. That is to say, it resolves the conflict of laws controlling the two courts in favor of that of the attaching court. The Supreme Court holds the contrary.

Furthermore, *Erie Railway Company v. Tompkins*, supra, 78, plainly states that "Except in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the State." Obviously, the specific question here is not one of a mere local state law but of the power of the United States district court, created and governed by acts of Congress, to issue execution to enforce its judgment or to render judgment on the supersedeas undertaking.

The appellant's judgment was not satisfied by Huron's payment to Manufacturers. The district court erred in both its judgments appealed from and they are reversed.

Reversed.

[Endorsed]: Opinion. Filed Apr. 30, 1940. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 9285

LINCOLN MINE OPERATING COMPANY,
Appellant,

vs.

HURON HOLDING CORPORATION, and NA-
TIONAL SURETY CORPORATION,
Appellees.

JUDGMENT

Upon Appeal from the District Court of the United States for the District of Idaho, Southern Division.

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the District of Idaho, Southern Division and was duly submitted:

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgments of the said District Court in this cause be, and hereby are reversed, with costs in favor of the appellant and against the appellees.

It Is Further Ordered and Adjudged by this Court that the appellant recover against the appellees for its costs herein expended, and have execution therefor.

[Endorsed]: Filed and entered April 30, 1940.
Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

ORDER STAYING ISSUANCE OF MANDATE

Upon application of Mr. Jess Hawley, counsel for the appellee Huron Holding Corp., and good cause therefor appearing, It Is Ordered that the issuance, under Rule 32, of the mandate of this Court in the above cause be, and hereby is stayed to and including July 6, 1940; and in the event the petition for a writ of certiorari to be made by the appellees herein be docketed in the Clerk's office of the Supreme Court of the United States on or before said date, then the mandate of this Court is to be stayed until after the said Supreme Court passes upon the said petition.

WILLIAM DENMAN

United States Circuit Judge.

Dated: San Francisco, California, June 4, 1940.

[Endorsed]: Order, etc. Filed June 4, 1940. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

**CERTIFICATE OF CLERK, U. S. CIRCUIT
COURT OF APPEALS FOR THE NINTH
CIRCUIT, TO RECORD CERTIFIED UN-
DER RULE 38 OF THE REVISED RULES
OF THE SUPREME COURT OF THE
UNITED STATES.**

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing seventy-nine (79) pages, numbered from and including 1 to and including 79, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellees, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 11th day of June, 1940.

[Seal]

PAUL P. O'BRIEN,

Clerk.

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SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 14, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(1104)